

Remarks

Claims 35, 36, 38-41, and 44-49 are currently pending, with claim 35 being independent. By this amendment claims 37, 42, and 43 have been canceled and claim 35 has been amended. Applicant requests reconsideration in view of the amendments and the following remarks.

Interview Summary

Applicant thanks the Examiner for his time and for his helpful suggestions during the telephonic interview on June 1, 2011. During the interview, the references cited in the April 29, 2011 Office action were discussed. In particular, the Applicant discussed the inapplicability of the Logan reference in disclosing the claims as pending at the time, and the Examiner and Applicant discussed possible amendments that would further distinguish the Logan reference from the claimed invention. The claims have been amended to take into consideration the comments and suggestions made by the Examiner.

In view of the suggestions and comments made by the Examiner during the interview, Applicant believes that the Examiner will agree that, after entry of the instant amendments, the pending claims are allowable over the cited references.

35 U.S.C. § 112, Second Paragraph, Rejection of Claim 43

Claim 43 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for containing the term “easily,” which the Office alleges is subjective. Applicant respectfully disagrees; however, to facilitate prosecution Applicant has canceled claim 43, rendering this rejection moot.

35 U.S.C. § 102(b) Rejection of Claims 35, 39, 40, 44, 45, and 48 in view of Logan

Claims 35, 39, 40, 44, 45, and 48 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5,721,827 to Logan et al. (Logan).

Independent claim 35, as amended, is directed to a method of combining at least two audio files containing media into a new audio file. The method comprises receiving a first audio file that contains advertising content from a first party, receiving a second audio file that includes

non-advertising content from a second party, and creating a single combined audio file from the first and second audio files. The combined audio file is a single digital file in an audio file format that includes the advertising content of the first audio file in a portion of the combined audio file and the non-advertising content of the second audio file in another portion of the combined audio file.

Claim 35 further recites that the combined audio file is made accessible for download to a plurality of users via a computer network. The combined audio file is transmitted to at least one device where the entire combined audio file is saved for later playback. A payment is received from the first party for inclusion of the first audio file with the combined audio file, and at least a portion of the payment is distributed as a royalty payment to the second party for the inclusion of the second audio file with the combined audio file. Moreover, the combined audio file is made accessible for download free of charge by the plurality of users.

In addition, claim 35 recites that the saved combined audio file can be played back repeatedly on the device, and the combined audio file is configured so that when it is played back from a saved location on the device, both the first and second audio files are played. In addition, each time the combined audio file is played back, a portion of the combined audio file containing the advertising content is played before another portion of the combined audio file containing the non-advertising content.

Logan does not teach or suggest the above-noted features of claim 35.

1. Logan does not teach or suggest the creation of a “single combined audio file.”

The combined audio file of claim 35 is a single digital file in an audio file format that includes the advertising content of the first audio file in a portion of the combined audio file and the non-advertising content of the second audio file in another portion of the combined audio file. Logan does not teach or suggest the combination of any audio files into a new, single digital file as recited in claim 35.

Logan is directed to a system for personalizing information and entertainment programming to subscribers. In particular, Logan teaches:

An audio program and message distribution system in which a host system organizes and transmits program segments to client subscriber locations. The host organizes the program segments by subject matter and creates scheduled

programming in accordance with preferences associated with each subscriber. Program segments are associated with descriptive subject matter segments, and the subject matter segments may be used to generate both text and audio cataloging presentations to enable the user to more easily identify and select desirable programming. A playback unit at the subscriber location reproduces the program segments received from the host and includes mechanisms for interactively navigating among the program segments. A usage log is compiled to record the subscriber's use of the provided program materials, to return data to the host for billing, to adaptively modify the subscriber's preferences based on actual usage, and to send subscriber-generated comments and requests to the host for processing. Voice input and control mechanisms included in the player allow the user to perform hands-free navigation of the program materials and to dictate comments and messages which are returned to the host for retransmission to other subscribers. The program segments sent to each subscriber may include advertising materials which the user can selectively play to obtain credits against the subscriber fee.

See Logan, Abstract (emphasis added).

Thus, Logan teaches that program segments can be received at a subscriber location. In addition, Logan teaches that these “programming and advertising segments” can be downloaded. *See, e.g., col. 6, line 65 - col. 7, line 12.* However, all of these segments are downloaded as separate program files. Nothing in Logan teaches that these separate program files can be combined into a single combined audio file as alleged in the Office action.

Logan refers to a “download compilation file” at col. 5, lines 37-40. However, this download compilation file is not a new audio file in an audio file format that allows the download compilation file to be played back on a media player or other such device. Instead, the download compilation file contains “one or more subscriber and session specific files which contain the identification of separately stored storables files.” Thus, the so-called compilation file is not a single combined audio file but a group of separately stored storables files. Although some of these separately storables files may contain audio files, none of those audio files are combined into a new combined audio file capable of being played back on a media player or other such device.

In fact, because these segments are separate program files the user must also download a “program sequence file which provisionally identifies the order in which downloaded program segments are to be played.” *See col. 7, lines 8-13.* Obviously, if these segments were joined into a single combined audio file, as recited in claim 35, there would be no need to specify the order

of playback in a separate “sequence file.” If the program segments described in Logan were joined into a single combined audio file (as alleged in the Office action), the order of playback would simply be the order of arrangement of the files in the single combined audio file. But since they are not combined into a single combined audio file, a sequence file is required.

Accordingly, at most, Logan teaches that multiple “program segments” can be downloaded along with a “sequence file” (*i.e.*, a playlist) that tells the playback device the order in which it should select and playback the program segments. Logan does not teach or suggest the creation of a single combined audio file as recited in claim 35.

2. *Logan also does not teach or suggest that the portion of the combined audio file containing the advertising content is played before the portion of the combined audio file containing the non-advertising content each time the combined audio file is played.*

Claim 35 has been amended to recite that the portion of the combined audio file containing the advertising content is played before the portion of the combined audio file containing the non-advertising content. Thus, the two original audio files are combined into a new audio file so that each time the entire new audio file is played, the portion of the new file containing the advertising content is played before the portion of the new file that contains the non-advertising portion.

As discussed above, Logan does not teach or suggest the creation of a new, combined audio file as recited in claim 35. Nor does Logan teach or suggest the creation of a combined audio file that is structured so that an advertising portion plays before a non-advertising portion. At best, Logan describes a sequence file that determines the order of playback. However, this sequence file can be altered, thereby changing the order of playback of any of the separate program files contained in the download compilation file. Accordingly, nothing in Logan teaches or suggests that the advertising content is arranged so that a combined audio file is provided whereby the portion of the combined audio file containing the advertising content is played before the portion of the combined audio file containing the non-advertising content each time the combined audio file is played.

3. *Logan also does not teach or suggest making a single combined audio file accessible for download free of charge as recited in claim 35.*

As discussed above, Logan does not teach or suggest the creation of a new, combined

audio file as recited in claim 35. Nor does Logan teach or suggest that such a combined audio file can be made accessible “free of charge” as recited in claim 35.

Logan describes a subscriber-based model where a user must establish a subscriber account prior to obtaining any of the program segments described therein. *See, e.g.*, col. 8, lines 31-63. Logan repeated indicates that subscribers must pay a “charge” ranging from a “minimum charge” to higher charges. *See* col. 21, lines 44-53. Logan notes that commercial content can reduce the subscription charge. For example, Logan notes that advertising segments can “reduce[] the programming charge to the subscriber.” *See* col. 9, lines 57-63. However, a reduced charge or a minimum charge is, obviously, still a charge. Thus, although Logan states that a “ChargeLevel value” can be zero, that reference is about *reducing the* cost to a “minimum charge”—not to a zero charge to the subscriber. *See* col. 21, lines 44-53. Accordingly, the statements of reduced charges in Logan do not teach or suggest that the services can be provided “free of charge” as recited in claim 35.

Moreover, Applicant respectfully submits that the distinction between free and a reduced charge is significant. Because no payment by a user is required in the method recited in claim 35, no registration or other subscriber account is required to track a subscriber’s use of the non-commercial and commercial program segments. Moreover, downstream copyright issues are eliminated and/or greatly reduced with the claimed method because the combined audio file can be freely distributed by the users themselves. In other words, the method of distribution recited in claim 35 does not require that a user be prohibited from further distributing the combined audio file. In contrast, Logan needs to restrict distribution of its program segments because downstream users would not be required to listen to any commercial content associated with its program segments. Accordingly, the free distribution of a combined audio file that itself contains the supporting commercial content, as recited in claim 35, is significantly different than receiving some content at a reduced charge through Logan’s subscriber model.

For at least the above reasons, Applicant respectfully submits that claim 35 is allowable over the cited reference. In addition, claims 39, 40, 44, 45, and 48 depend from independent claim 35 and are, therefore, allowable for at least the same reasons discussed above with respect to claim 35. Moreover, each of claims 39, 40, 44, 45, and 48 recites additional features and is believed allowable over the cited reference in its own right.

35 U.S.C. § 103(a) Rejection of Claims 37, 46, and 47 in view of Logan

Claims 37, 46, and 47 have been rejected under 35 U.S.C. § 103(a) as allegedly obvious in view of Logan.

As described above, claim 35 is allowable over Logan for at least the above-discussed reasons. Claims 46 and 47 depend from claim 35 and are allowable over the cited reference for at least the same reasons discussed above.

35 U.S.C. § 103(a) Rejection of Claims 36, 38, 42, and 43 in view of Logan and Wolfe

Claims 36, 38, 42, and 43 have been rejected under 35 U.S.C. § 103(a) as allegedly obvious in view of Logan and further in view of U.S. Patent No. 5,931,901 to Wolfe et al. (Wolfe).

As described above, claim 35 is allowable over Logan for at least the above-discussed reasons. Wolfe does not remedy the deficiencies discussed above with respect to Logan. Claims 36 and 38 depend from claim 35 and are allowable over the cited references for at least the same reasons discussed above.

35 U.S.C. § 103(a) of Claim 49 in view of Logan and Schulhof

Claim 49 has been rejected under 35 U.S.C. § 103(a) as allegedly obvious in view of Logan and further in view of U.S. Patent No. 5,557,541 to Schulhof et al. (Schulhof).

As described above, claim 35 is allowable over Logan for at least the above-discussed reasons. Schulhof does not remedy the deficiencies discussed above with respect to Logan. Claim 49 depends from claim 35 and are allowable over the cited references for at least the same reasons discussed above.

35 U.S.C. § 103(a) of Claim 41 in view of Logan, Wolfe, and Willbanks

Claim 41 has been rejected under 35 U.S.C. § 103(a) as allegedly obvious in view of Logan, in view of Wolfe and U.S. Patent No. 5,703,995 to Willbanks (Willbanks).

As described above, claim 35 is allowable over Logan for at least the above-discussed reasons. Neither Wolfe nor Willbanks, alone or in combination, remedies the deficiencies discussed above with respect to Logan. Claim 41 depends from claim 35 and is allowable over the cited references for at least the same reasons discussed above.

Conclusion

The present application is in condition for allowance and such action is respectfully requested. If any issues remain concerning this application, the examiner is invited to contact the undersigned attorney.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301

By


Deakin T. Lauer
Registration No. 47,735